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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150105013-5291-02]

RIN 0648-BE62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Recreational Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the daily bag limit for red grouper in the Gulf of Mexico (Gulf) and removes the recreational post-season bag limit reduction accountability measure (AM) for Gulf red grouper. Additionally, this rule corrects an error in the Gulf individual fishing quota (IFQ)

multi-use provisions for the Grouper/Tilefish IFQ program. The purpose of this final rule is to modify the Gulf red grouper recreational management measures to improve recreational fishing opportunities by achieving optimal yield for the red grouper resource.

DATES: This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html.

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, telephone: 727-824-5305, e-mail: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On January 27, 2015, NMFS published a proposed rule for the framework action and requested public comment (80 FR 4240). The proposed rule and framework action outline the rationale for the actions contained in this final rule. A summary of the actions

implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule reduces the Gulf red grouper recreational bag limit from four fish to two fish within the four-fish aggregate grouper bag limit, and removes the post-season AM that reduces the daily bag limit the next fishing season when the previous fishing year's annual catch limit (ACL) is exceeded. The other post-season AMs currently codified in the regulations remain in effect without change.

Additional Change to Codified Text

In addition, this final rule corrects a mistake in the regulations that was implemented in the final rule for Amendment 32 to the FMP. NMFS changes "red grouper multi-use allocation" to "gag multi-use allocation" in § 622.22(a)(5)(ii)(B), where it erroneously stated that if red grouper is under a rebuilding plan, then "red grouper multi-use allocation" should be set to zero. This change is not related to the framework action.

Comments and Responses

NMFS received 28 comment submissions on the framework action and the proposed rule; 1 from a sport fishing club, 1 from a state agency, and 26 from individuals. All comments received were in regard to the bag limit reduction; no comments were received directly addressing the removal of the accountability measure. Fourteen submissions supported the bag limit reduction, which is expected to alleviate the

need for in-season closures. Eight individuals specifically opposed the bag limit reduction. Other submissions were outside the scope of the rule, offering suggestions for alternative management options, such as different size and bag limits, regionalized regulations, or a tag system. These are options the Council has considered in the past, and could consider again. A summary of the comments addressing the actions being implemented by this rulemaking and NMFS' responses to those comments appears below.

Comment 1: The new regulation could lead to overfishing of the Gulf red grouper resource.

Response: NMFS disagrees that either the bag limit reduction or the removal of the post-season AM could lead to overfishing of Gulf red grouper. The two-fish bag limit, although primarily intended to extend the length of the open season, should reduce the probability of exceeding the ACL by the recreational sector. The AM that reduced the bag limit by one fish if the ACL was exceeded in the previous year was also intended to extend the length of the open season and to avoid in-season closures. However, it is difficult to implement this in-season bag limit reduction in a timely manner and the bag limit change in the middle of the season created confusion. The Council determined, and NMFS agrees, that removing this AM would increase the efficiency of operating in this recreational sector and reduce public confusion without increasing the risk of exceeding the ACL because

there are other AMs that will remain in place.

Comment 2: The two-fish bag limit is unnecessary and unreasonable because the Gulf red grouper stock is healthy and abundant; there is no shortage of red grouper.

Response: NMFS agrees the stock is healthy. The latest stock assessment indicates the stock is not overfished or undergoing overfishing. However, the Council's decision to reduce the bag limit was not based on a need to limit the harvest of red grouper. This action is intended to extend the length of the open season and avoid in-season recreational closures.

Comment 3: A longer recreational closed season is preferred rather than a reduction in the bag limit. Reducing the red grouper bag limit to two fish would reduce the incentive to fish so that, even with a longer open season, the net economic effects of the action would be negative. Fishermen usually harvest two or three red grouper per angler, but having the opportunity to harvest four fish is an incentive for the trip. Offshore harvest levels should be at least three fish per angler.

Response: NMFS disagrees that it is preferable to have a longer closed season rather than a lower bag limit. Although it is not possible to reliably forecast changes in fishing effort or the associated economic impacts of the reduction in the red grouper bag limit with available data, public comments on this and similar rules

indicate the majority of anglers prefer a longer open season. Longer open seasons provide greater flexibility to schedule trips and although some fishermen may harvest more than two fish per trip, and therefore choose to not fish under the lower limit, most anglers do not. The economic analysis in the framework document explains that in 2011-2012, when the red grouper bag limit was 4 fish, more than 90 percent of trips taken by anglers fishing from private vessels or charter vessels, and more than 98 percent of headboat trips, harvested 1 or 2 red grouper per trip. As a result, lowering the limit to two fish is not expected to adversely affect the harvest of most anglers, or their decision to fish. A longer open season with a reduced bag limit is expected to create more trips and result in greater economic benefits than a shorter season with a higher bag limit, which reduces the overall number of trips.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of Gulf red grouper and is consistent with the framework action, the FMP, the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business

Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification to the Small Business Administration. Comments regarding the general net economic effects of the action are addressed in the comments and responses section of this final rule. No changes to the final rule were made in response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red grouper.

Dated: April 1, 2015

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH

ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.22, the last sentence in paragraph (a) (5) (ii) (B) is revised to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(5) * * *

(ii) * * *

(B) * * * However, if red grouper is under a rebuilding plan, the percentage of gag multi-use allocation is equal to zero.

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3. In § 622.38, the first sentence in paragraph (b) (2) is revised to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(2) *Groupers, combined, excluding goliath grouper--4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag or 2 red grouper per person per day.* * * *

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4. In § 622.41, the second sentence in paragraph (e) (2) (ii) is revised and the third sentence in the same paragraph is removed to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(2) * * *

(ii) * * * In addition, the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

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